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C O N F I D E N T I A L CARACAS 003365

SIPDIS

NSC FOR CBARTON
HQ USSOUTHCOM ALSO FOR POLAD

E.O. 12958: DECL: 10/29/14

TAGS: PHUM KDEM PGOV VE

SUBJECT: CONTENT LAW FRIGHTENS MEDIA AND FREE SPEECH
ADVOCATES

REF: STATE 223273

Classified By: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASON 1.4 (d)

SUMMARY

1. (U) Pushing to advance the "revolution" following the favorable outcome of the recall referendum, the GoV has made good on its promise to seek enactment of the "Law of Social Responsibility in Radio and Television." The private media insist it's a significant step toward the muzzling of free expression, while the GoV claims the law aims to protect society, especially children, from inappropriate content. Amongst other effects, the law would regulate content and the television schedule, require large portions of daily programming to be produced by "national independent producers" (rather than the television stations or foreign producers), punish loosely-defined character defamation of public figures, regularly require airtime be ceded to the government, limit paid advertising and publicity, and levy a tax on the media to finance a "Fund for Social Responsibility." The law would back these requirements with the threat of fines and suspension or revocation of licenses. The power to monitor, evaluate, and penalize would belong the National Telecommunications Commission (CONATEL), a sub-agency of the Ministry of Infrastructure whose director is named by the President. END SUMMARY.

PROVISIONS OF THE "GAG LAW"

2. (U) The draft law covers all forms of broadcast media. Included are: "open" broadcast television (VHF and UHF), "open" radio (FM, AM, and community radio), and subscription television (cable and satellite). The present wording is such that the law can be applied to future, as yet unimagined, types of electronic media. A provision claiming jurisdiction over internet sites pertaining to Venezuelan broadcast media companies has been removed from the most recent draft.

3. (U) The legislation specifies a complicated system of schedules and classifications of inappropriate content which is to be regulated within those schedules. It creates three categories of programming time: All-User time (07:00-19:00), Supervised time (19:00-23:00 and 05:00-07:00), and Adult time (23:00-05:00). The content largely prohibited during the first two time categories includes most types of sexual content and crude language, as well as such "unhealthy" conduct as drinking excessively and smoking. "Violent" images and sounds (broadly-defined) are also banned during all but the adult hours.

4. (U) Television and radio stations are convinced that this is the provision which will be used to silence them. They argue that it would be nearly impossible to produce a news product in which images or sounds of, for example, a terrorist attack (9/11 is the commonly-cited example) are prohibited. During all but the adult hours, the law bans content which presents elements of "physical, psychological, sexual, or verbal violence exercised individually or collectively against one or more people, objects, or animals" and also that which presents "the consequences or effects" of the aforementioned types of violence. No exception is made for news. Stations would also have to publish a monthly

programming schedule and stick to it, the only exceptions being for government broadcasts and for live "exceptional" messages.

5. (U) The draft legislation now provides no more permissive standard in portraying public figures than for private figures, and the law would explicitly ban character offenses. Article 3, paragraph 3 states that one of the bill's primary goals is to, "Promote the effective exercise and respect for human rights, in particular, the protection of honor, private life, intimacy, one's own image, confidentiality, and respect...without censorship." Some reporters worry that this

clause may be used to punish any embarrassing disclosure about public or private officials, whether personal, professional, or criminal, and suspect that it might even be used to discourage political cartoons or parodies. Legislators changed the language from "guarantee" the protection of honor to promoting it, when they approved the article in mid October. Still, media figures believe the intent of this provision remains the same. And though explicit penalties for such offenses have been removed from the bill, media figures believe the new penal code, also working its way through the assembly now, will provide the punishment.

16. (U) One provision that causes grave concern amongst broadcasters is the article that requires large portions of the schedule be given over to "national independent producers." For instance, 60% of the All-User time programming must be of national origin, while 36% of All-User programming must be the product of national independent producers (NIPs). Only 15% of a stations' independent programming can come from any one NIP.

17. (U) According to Article 13, to be classified a NIP by the National Telecommunications Agency (CONATEL), a producer must be Venezuelan and resident in Venezuela, not related by a fourth degree (nor married to or cohabitating with) anyone employed by a radio/TV service provider, possess experience, "demonstrate capacity to produce national productions," and comply with the rest of the requirements established in the technical norms (no further reference to where to find those norms). The person also must not be linked through contract, active participation, address, or subordinate commercial relationship to any radio or television service provider. These requirements are retroactive for the 12 months preceding application to CONATEL to be classified a NIP (reduced from 24 months in previous drafts). CONATEL has the right to revoke NIP status at any time. Opponents of the bill say that this effectively forces media to cede control over as much as half their airtime to outsiders who, 1) have no experience in producing programming and, 2) are beholden to the government.

18. (U) CONATEL's broad role in regulation, review, and sanctions worries media and opponents of President Hugo Chavez. A presidentially-appointed director heads CONATEL, which falls under the Ministry of Infrastructure. Earlier versions of the law, as proposed by CONATEL, envisioned the creation of a semi-autonomous National Institute of Radio and Television (INART), which would have been responsible for monitoring media compliance with the law. Subsequent versions, however, granted those powers to CONATEL. Critics point to four areas of concern regarding CONATEL's proposed oversight role: 1) its role in granting NIP status to producers, 2) its approval of User Committees, 3) its nearly complete control over the sanctions regime, and 4) its

financing of these activities and of NIPs through a special tax levied on media companies, called the "Fund for Social Responsibility."

19. (U) According to article 19, the "Directorate of Social Responsibility," would sanction violators of the media law, under the direction of CONATEL. The composition of the board guarantees that the government will always have at least a majority vote. The directorate is to be comprised of one representative from each of the following: the Ministries of Communication and Information, Health, and Education and Culture, the National Institute of Women (INAMUJER), the National Council for the Rights of Children and Adolescents (CNDNA), the churches (collectively), the universities with graduate schools of communication (collectively), the "users" (collectively), and NGO's concerned with protection of children (collectively).

10. (U) CONATEL's power to declare violations of the law and impose sanctions causes the greatest concern among broadcasters and their supporters. For television stations, fines would range from \$13,000 for a minor infraction to \$430,000 for more "serious" infractions. Violations would include showing violence during the day (apparently to include that which appears in news programming), not identifying themselves as required in article 4 (in TV's case, by displaying their logo in the top left-hand corner at all times, including during commercials), and not broadcasting the required quota of NIP programming. In the case of radio, fines are no more than 50% of the equivalent television fine.

11. (C) Opposition deputy Gerardo Blyde (Primero Justicia), a leading negotiator of the bill with the Minister of Communication and Information, says that even the most financially sound of the media companies would not be able to withstand repeated fines, which he characterized as "excessive." He asserted that the government could bankrupt leading station Venevision with three maximum fines, leaving

the channel in the hands of the government. Felipe Serrano, director of the Venezuelan Chamber of Radio Broadcasters, expressed a similar concern to Poloff, saying many radio stations, if fined, would end-up in government hands.

12. (U) Beyond fines, broadcasters would face suspension of rights for up to 72 hours for such infractions as: broadcasting messages which "promote, apologize for, or incite alterations of public order," or "are contrary to the security of the nation." Broadcast rights may also be suspended after receiving two of the maximum monetary fines within a three year period. The most serious penalties, imposed for recurring infractions, are suspension of license for up to five years or revocation of license. Broadcasters may appeal sanctions to the Minister of Infrastructure and, subsequently, at the Supreme Court (TSJ).

13. (U) A "tribute" of two-percent of gross annual revenue will be levied on all broadcast media enterprises by CONATEL and will be used to create and sustain a "Fund for Social Responsibility." CONATEL will use this fund primarily to finance the operations of NIPs. It will also fund other aspects of the agency's oversight of the law, such as its approval of "User Committees." Under the law, Venezuelan citizens can form "User Committees" to monitor media content and file complaints; upon which CONATEL confers official status. Critics assert that CONATEL would approve mostly committees sympathetic to the President, or hostile to the

media and the opposition. The result, according to one opposition lawmaker, would be "Bolivarian Circles of Communication." In addition to fines and more serious penalties, the law requires alleged violators to answer all user committee complaints formally within 15 days. Failure to meet the 15 day deadline would lead to punitive actions against the enterprise.

14. (C) Venezuelan media also complain that the law will lead to self-censorship. A lawyer for all-news channel Globovision asserted that there would be a "chilling effect that will lead to prior restraint." The primary cause, she and others argue, is the "third party liability" clause in the legislation. Electronic media outlets will not only be held accountable for the content they produce and the images they transmit, but also for what their guests and interview subjects say. Advertisers too will be legally liable for any prohibited content aired within a program that they are sponsoring or during which they have purchased time. If an interview subject violates "the honor," "intimacy," or "reputation" of a public figure in the course of an interview, the station and sponsors can be held equally liable. The same is true if a station is issued a violation for showing scenes of violence or the results thereof. The only exception granted by the law is for "live, direct from the scene transmission, when the broadcaster can prove that it acted diligently to avoid or suspend the infraction." Media fear that CONATEL's interpretations will be subjective and depend on the government's disposition toward the company in question.

15. (U) Aside from formalizing the government's right to take-over the airwaves with "cadenas," the law would also require all stations to cede to the government 70 minutes per week for publicizing educational and informative messages, the timing of which is to be left to the Minister of Communication and Information. Of that 70 minutes, the government must cede 10 minutes to "the users." Subscription television services (cable and satellite), which must have government authorization to operate, will be required to carry all "open" channels (including VTV, which belongs to the government, but captures little audience share) and to provide one channel to the Ministry of Communications and Information exclusively for the airing of programs produced by NIPs.

COMMENT

16. (C) It seems likely that Venezuelan legislators will make minor changes to some controversial aspects of the bill. Others will be easily approved. In fact, as the GoV points out, some aspects of the law resemble conditions under which broadcast media operate in some European countries. However, there have been no signs of government willingness to lessen CONATEL's control over media content. Regardless of small adjustments that are won by the opposition, the overall effect of the law, once implemented, will be one of restricting free speech and lessening criticism of the government, both through direct censorship, and through self-censorship. Much of the law codifies censorship. Under this law, as one opposition deputy put it, "It will be costly to criticize the government in the future."

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2004CARACA03365 - CONFIDENTIAL